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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD E. JORDAN,

Defendant and Appellant.

D062449

(Super. Ct. No. SCD239885)

APPEAL from a judgment of the Superior Court of San Diego County, Joan P. Weber, Judge. Affirmed.

Donald E. Jordan appeals a judgment following his conviction for robbery (Pen. Code, § 211). He challenges the imposition of a \$154 criminal justice administration fee (Gov. Code, § 29550)<sup>1</sup> and a \$38 theft fine (Pen. Code, § 1202.5). Jordan contends an ability-to-pay requirement must be read into section 29550.1 to avoid violating the equal protection clause. (U.S. Const., 14th Amend.) He argues there is insufficient evidence to

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<sup>1</sup> Unless otherwise indicated, further statutory references are to the Government Code.

support a finding he had the ability to pay either the criminal justice administration fee or the theft fine. We affirm.

## FACTS

On September 12, 2011, Jordan lured Eduardo Flores to his neighborhood under the pretense of selling a car to him. When Flores arrived, Jordan struck him in the back of the head, and then repeatedly hit and kicked Flores in the head and body, threatening to kill him. Flores gave Jordan his wallet, containing approximately \$3,500 dollars. Jordan started to walk away but returned and kicked Flores in the head. Flores suffered internal bleeding in the brain.

Several months later, a San Diego Police Department detective located Jordan in the San Diego County jail, where he was serving a sentence for assault in an unrelated case. Jordan was arrested and rebooked on charges of robbery. (Pen. Code, § 211.) He was convicted after a jury trial.

On July 27, 2012, the trial court sentenced Jordan to three years in prison and imposed various fines and fees, including a \$154 criminal justice administration fee and a \$38 theft fine. Jordan filed this timely appeal.

## DISCUSSION

### I

#### *Criminal Justice Administration Fee*

### A

Sections 29550, 29550.1, and 29550.2 govern criminal justice administration fees for processing arrested persons into county jail. These fees are also known as booking

fees.<sup>2</sup> (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1399.) Booking fees vary depending on the identity of the arresting agency and the eventual disposition of the person arrested. Persons arrested by a local agency are liable for one-half the amount of the booking fee without any determination of his or her ability to pay the fee. (§ 29550, subd. (a)(1).) If incarcerated, county arrestees may be liable for the full booking fee. If county arrestees receive probation, their liability for the booking fee is conditioned on their ability to pay. (§ 29550, subd. (d).) Persons arrested by other than a local or county agency are liable for the full booking fee, subject to their ability to pay. (§ 29550.2.)

Jordan claims section 29550.1 violates the equal protection clause by treating a defendant who was arrested by local authorities differently from a defendant who was arrested by county or other authorities. He argues to avoid constitutional infirmity this court must read an ability-to-pay requirement into section 29550.1. Jordan then asserts there is insufficient evidence in the record to support an implied finding he had the ability to pay the \$154 booking fee.

The People contend Jordan has forfeited any claim on appeal concerning the booking fee by failing to assert the claim in the trial court. (*People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357.) The California Supreme Court has granted review of several

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<sup>2</sup> A booking fee covers costs for functions that are performed in order to receive an arrestee into a county detention facility, including such tasks as searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee; document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility; warrant service, processing, and detainer; inventory of an arrestee's money and creation of cash accounts; inventory and storage of an arrestee's property; inventory, laundry, and storage of an arrestee's clothing; and classification of an arrestee. (§ 29550, subd. (e).)

appellate decisions addressing whether forfeiture applies when a defendant did not object to the imposition of a booking fee in the trial court. (*People v. Mason*, review granted Aug. 29, 2012, S203747; *People v. McCullough*, review granted June 29, 2011, S192513.) The state's high court has not yet resolved this issue. Assuming the doctrine of forfeiture applies, we nevertheless exercise our discretion to review Jordan's claims on their merits. (*People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6, 162.)

## B

### *The Criminal Justice Administration Fee for Local Arrestees Does Not Violate Principles of Equal Protection*

For the purpose of assessing booking fees, the Legislature has created three classes of defendants that can generally be characterized as local arrestees,<sup>3</sup> county arrestees<sup>4</sup>

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<sup>3</sup> Government Code section 29550.1 provides: "Any city, special district, school district, community college district, college, university, or other local arresting agency whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. *A judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee* by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the city, special district, school district, community college district, college, university, or other local arresting agency for the criminal justice administration fee." (Italics added.)

<sup>4</sup> Government Code section 29550 states, in pertinent part: "Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked." (§ 29550, subd. (c).) "When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency: [¶] (1) *A judgment of conviction may impose an order for payment of the criminal administration fee* by the convicted person, and

and persons arrested by other than a local or county agency (state arrestees).<sup>5</sup> The trial court is required to impose a booking fee on a local arrestee upon conviction without determining his or her ability to pay. (§ 29550.1.) The trial court may impose a booking fee on a county arrestee if he or she is incarcerated, but may not make payment of that amount a condition of probation without determining whether the county arrestee has the ability to pay. (§ 29550, subd. (d).) For a person arrested by other than a local or county agency, the trial court must order payment if the arrestee has the ability to pay the booking fee. (§ 29550.2, subd. (a).)

The Legislature may make reasonable classifications of persons, provided the classifications are made with a legitimate goal to be accomplished. (*People v. Spears* (1995) 40 Cal.App.4th 1683, 1687.) To succeed on a claim under the equal protection clause, the appellant first must show the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. (*Cooley v. Superior Court*

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execution may be issued on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt. [¶] (2) *The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs.*" (§ 29550, subd. (d), italics added.)

5 "Any person booked into a county jail pursuant to any arrest by any governmental entity not specified in Section 29550 or 29550.1 is subject to a criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. . . . *If the person has the ability to pay, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the county for the criminal justice administration fee.*" (§ 29550.2, subd. (a), italics added.)

(2002) 29 Cal.4th 228, 253.) "This initial inquiry is not whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.' " (*Ibid.*, quoting *People v. Gibson* (1988) 204 Cal.App.3d 1425, 1438.)

Although sections 29550.1, 29550, and 29550.2 each concern a fee imposed on a convicted defendant to cover the costs of booking that person into a county jail, a local arrestee is not similarly situated to a county or state arrestee with respect to liability for that fee. A local arrestee is liable for no more than one-half the actual fees incurred by a county in booking a local arrestee in county jail. (§ 29550, subd. (a)(1) [fee imposed by the county shall not exceed one-half the actual administrative costs incurred in booking or otherwise processing arrested persons].) In contrast, county and state arrestees may be liable for the full amount of the county's booking or processing expenses. (§§ 29550, subd. (d), 29550.2, subd. (a).)

A convicted person who was arrested by a local agency is subject to half the amount of the booking fee that may be imposed on a county or state arrestee.<sup>6</sup> Thus a local arrestee is not similarly situated to a state arrestee, who may be held liable for the full amount of a booking fee, subject to an ability-to-pay determination if payment is made a condition of probation, or to a state arrestee, who is potentially liable for the full amount of the booking fee, subject to his or her ability to pay. A local arrestee receives the benefit of a reduced fee but does not receive the opportunity to completely avoid

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<sup>6</sup> Based on the record in this case, we assume that the booking fee that was imposed on Jordan was one-half or less than the actual fees incurred by San Diego County in booking him in county jail. (§ 29550, subd. (a)(1).)

liability for the full amount. Equal protection does not require persons in different circumstances to be treated as if their situations were similar. (*People v. McCain* (1995) 36 Cal.App.4th 817, 819.) Therefore we reject Jordan's argument that all arrestees are similarly situated with respect to their liability to pay booking fees. To the extent the arrestees are similarly situated, equal protection does not require identical treatment. "[L]ike treatment" is constitutionally acceptable. (*Darces v. Woods* (1984) 35 Cal.3d 871, 885; *In re Jose Z.* (2004) 116 Cal.App.4th 953, 960.) Each of the applicable statutes allows an arrestee to avoid liability for the full cost of the booking fee.

Even if local, county and state arrestees were similarly situated, Jordan does not show the statutory scheme violates the equal protection clause. Classifications of persons under sections 29550, 29550.1 and 29550.2 are not made on the basis of race, alienage, national origin, gender or legitimacy, which require heightened scrutiny. (*City of Cleburne, Tex. v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 440; *People v. Wilkinson* (2004) 33 Cal.4th 821, 836.) Generally, legislation is presumed to be valid under the equal protection clause if the statutory classification is rationally related to a legitimate state interest (rational basis test). (*City of Cleburne*, at p. 440; *Wilkinson*, at p. 836.)

A local agency that must pay booking and processing costs to the county for its arrestees "is entitled to recover any criminal justice administration fee imposed by a county" from the arrested person without having to prove the defendant's ability to pay. (§ 29550.1.) This fee shall not exceed one-half of the actual administrative costs. The county may collect this fee by submitting an invoice to the local agency. (§ 29550, subd.

(a)(1).) The local agency may recover the fee imposed by the county by passing on the reduced booking fee to the local arrestee. (§ 29550.1.) In contrast, a county does not pass on fees to another entity for the costs of booking county and state arrestees into county jail, and is entitled to recover the full amount of the booking fee directly from a county or state arrestee. (§§ 29550, subd. (d), 29550.2.)

The Legislature could rationally conclude that imposing one-half the booking fee without regard to the local arrestee's ability to pay provides local agencies with the opportunity to recover administrative costs it must pay to the county. At the same time, it gives the benefit of the reduction in the fee to the local arrestee. A statutory classification that does not discriminate against suspect classes or infringe fundamental constitutional rights withstands an equal protection challenge " ' *if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.* " ' [Citations.]" (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 482.) Where there are plausible reasons for the Legislature's classification, the inquiry is at an end. (*Ibid.*) The fact the Legislature may have imposed a different scheme to allow county and local agencies to recover administrative costs for booking arrestees is a matter for legislative, not judicial, consideration. (Cf. *U.S. Railroad Retirement Bd. v. Fritz* (1980) 449 U.S. 166, 179.)

We conclude that section 29550.1 does not violate Jordan's equal protection rights. Accordingly, no finding of Jordan's ability to pay was required and his claim the evidence is insufficient to sustain such a finding is immaterial.



## II

### *Theft Fine*

Jordan argues the trial court was required to, but did not, make an express finding of ability-to-pay on the record. He contends there was insufficient evidence to support a finding that he had the ability to pay a \$38 theft fine because the evidence showed he was unemployed, living rent free with relatives and receiving \$200 month in food assistance.

When a defendant is convicted of a violation of Penal Code section 211, as here, Penal Code section 1202.5 directs the court to order the defendant to pay a fine in addition to any other penalty or fine imposed. "If the court determines the defendant has the ability to pay all or part of the fine, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution." (Pen. Code, § 1202.5.)

A trial court's determination of a defendant's ability to pay fines and fees need not be express but may be implied through the content and conduct of the hearings. (*People v. Martinez* (1998) 65 Cal.App.4th 1511, 1516-1517 (*Martinez*); *People v. Ramirez* (1995) 39 Cal.App.4th 1369, 1377 (*Ramirez*); *People v. Staley* (1992) 10 Cal.App.4th 782, 784-786 (*Staley*).) Whether express or implied, an order to pay fees cannot be upheld on appeal unless it is supported by substantial evidence. (*People v. Nilsen* (1988) 199 Cal.App.3d 344, 347.)

Here, the probation officer listed the recommended fines, fees and penalty assessments in the probation report, which was provided to the trial court and defendant in advance of the sentencing hearing. The probation officer stated Jordan had the ability to comply with reasonable terms of probation as indicated by his age, education, health, mental faculties and family background and ties. Until he was arrested for robbery, Jordan made regular child support payments of \$150 a month. Although currently unemployed, Jordan had previously worked for Walmart and NASCO. In his statement of mitigation, Jordan submitted a transcript of his college grades showing he had the ability to earn "A's." He was a few months shy of obtaining a certificate as an X-ray technician.

After considering the probation report, the defense statement of mitigation and the prosecution sentencing statement, hearing argument from the defense and prosecution, and listening to Jordan's statement to the court, the trial court imposed the fines and fees listed "on page[s] 10 and 11" of the probation officer's report. The record supports the conclusion that the trial court considered the evidence and made an implied finding that Jordan was able to pay the \$38 theft fine. (*Martinez, supra*, 65 Cal.App.4th at pp. 1516-1517; *Ramirez, supra*, 39 Cal.App.4th at p. 1377; *Staley, supra*, 10 Cal.App.4th at pp. 784-786.)

In determining whether a defendant has the ability to pay fees and fines, the trial court may consider the defendant's future ability to pay, including his ability to earn wages while in prison. (*Ramirez, supra*, 39 Cal.App.4th at p. 1377.) "Where the defendant is capable of supporting himself with legitimate employment, the trial court

may also consider his ability 'to find and maintain productive employment once his sentence is complete.' " (*Ibid.*, quoting *Staley, supra*, 10 Cal.App.4th at p. 786.) The record supports a finding Jordan was capable of earning wages, either in prison or when released. He was educated and had a history of employment. Jordan had a history of regularly paying child support. Jordan's total fees and fines totaled \$262. The court suspended a restitution fine of \$1,200 and postponed a hearing on victim restitution. The record contains substantial evidence to support the imposition of the \$38 theft fine based on Jordan's ability to pay, considering the amount of other fines and restitution. (Pen. Code, § 1202.5.)

#### DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

AARON, J.